



POLICE DEPARTMENT

The
City
of
New York

In the Matter of the Disciplinary Proceedings : -----x

against - : FINAL

Police Officer Michael Golden : ORDER

Tax Registry No. 946484 : OF

Police Service Area 9 : DISMISSAL

-----x

Police Officer Michael Golden, Tax Registry No. 946484, Shield No. 25881, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2015-13352 & 2015-13559, as set forth on form P.D. 468-121, dated April 8, 2015 and June 3, 2015, and after a review of the entire record, Respondent, having pleaded Guilty to Specifications 1 and 2 in Case No. 2015-13352, is found Guilty. In Case No. 2015-13559, Respondent is found Not Guilty of Specifications 1 and 2.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Michael Golden from the Police Service of the City of New York.

A handwritten signature in blue ink that appears to read "James P. O'Neill".
JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE: September 28, 2017



POLICE DEPARTMENT

September 6, 2017

In the Matter of the Charges and Specifications : Case Nos.
-----X-----
- against - : 2015-13352 & 2015-13559
Police Officer Michael Golden :
Tax Registry No. 946484 :
Police Service Area 9 :
-----X-----
At: Police Headquarters
One Police Plaza
New York, New York 10038
Before: Honorable Robert W. Vinal
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

Case No. 2015-13352

1. Said Police Officer Michael Golden, while assigned to Manhattan South Narcotics District, on or about September 17, 2014, in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective Golden anonymously made a false allegation of misconduct against a Member of the Service to the Internal Affairs Bureau Command Center.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT– PROHIBITED CONDUCT

2. Said Police Officer Michael Golden, while assigned to Manhattan South Narcotics District, on or about September 19, 2014, in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective Golden made a false allegation of misconduct against a Member of the Service to an investigator within the Internal Affairs Bureau.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT– PROHIBITED CONDUCT

Case No. 2015-13559

1. Said Police Officer Michael Golden, while on duty and assigned to the Organized Crime Control Bureau, on or about and between January 23, 2014 and October 2, 2014, at locations known to Department [sic], engaged in conduct prejudicial to the good order and efficiency of the Department, in that he offered six (6) women whose identities are known to the Department, a sum of United States Currency in exchange for sexual acts on six (6) seperate [sic] occasions.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS– PROHIBITED CONDUCT

2. Said Police Officer Michael Golden, while on duty and assigned to the Organized Crime Control Bureau, on or about and between January 23, 2014 and October 2, 2014, at locations known to Department [sic], engaged in conduct prejudicial to the good order and efficiency of the Department, in that said Detective solicited six (6) women whose identities are known to the Department, to engage in conduct he knew to constitute a crime.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS– PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 26, 2017.¹

¹ The trial record was held open until July 7, 2017, to allow the Advocate time to obtain documentation regarding the qualifications of the individuals who acted as translators at interviews conducted by Sergeant Fred Sawyer.

In Case No. 2015-13352, Respondent pleaded guilty to the subject charges. In Case No. 2015-13559, Respondent is found Not Guilty of the subject charges. The Assistant Department Advocate called Sergeant Luke Gasquez as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 2015-13352, Respondent pleaded guilty to both of the charges against him and testified in mitigation of his misconduct. In Case No. 2015-13559, after reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent not guilty of the charged misconduct.

FINDINGS AND ANALYSIS

Respondent's testimony in mitigation of his misconduct in Case No. 2015-13352

Respondent admitted that on September 17, 2014, while he was assigned to Manhattan South Narcotics District, he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he telephoned the Internal Affairs Bureau's (IAB) Command Center and made an anonymous false allegation of misconduct against his supervisor, Person A, in that he told the IAB investigator who answered his call that he had heard from a civilian that Person A was improperly showing photos of police officers who were working in an undercover capacity to another member of the service and to a civilian. Respondent also admitted that he also told the IAB investigator that when Person A was showing photos he made disparaging remarks about the two undercover officers whose photos he was displaying. Finally, Respondent admitted that at the time he made this call and spoke to the

investigator, he knew that these allegations were not true. Respondent further admitted that on September 19, 2014, an IAB investigator called him on the phone he had used to call IAB's Command Center two days before; that he engaged in a conversation with the investigator; and that he repeated the false allegations against Person A that he had made on September 17, 2014.

Respondent testified that as of September 2014, he had been working at Narcotics Borough Manhattan North for about one year and that his specific assignment was [REDACTED]

[REDACTED] for vice." Respondent recalled that just prior to September 2014, his best friend, [REDACTED], was killed in a car accident. Respondent personally notified [REDACTED] mother and his girlfriend, [REDACTED] [REDACTED], that he was dead. Respondent also picked out his coffin, wrote his obituary and planned his funeral. [REDACTED]

[REDACTED] He also spoke with [REDACTED] mother every day in an effort to comfort her. Respondent testified that doing all this had a "horrible" effect on him personally and professionally [REDACTED]

[REDACTED]
During this time period, Respondent had "an argument" with his supervisor, Person A, and he began "finding out through other people" that Person A "was very unhappy with me because I spoke out of turn" at a meeting that was attended by a chief and other supervisors. Respondent explained that this meeting was held to address when undercover officers should be "flipped" out of performing undercover duties and reassigned to perform "investigator" duties because of the stress involved in performing undercover duties. Respondent recalled that when a discussion began about better quality of life for undercover officers, he stated that the command "'should bring back certain training.'" Person A then

"decided to jump in." Person A told him, "The only reason you didn't get any training was because you were injured." Respondent testified that because this statement "was incorrect," he told Person A, "No, [you are] wrong." Respondent testified that, in retrospect, he should have "just sat down" and "leave it at that."

After this meeting, Respondent began "hearing through the grapevine, through other officers, other detectives, that he (Person A) was quite upset with me that I spoke out of turn" in front of a chief. Respondent also "heard through other people" that the reason that he was not being assigned to any details was because "whenever my name was mentioned" for a detail, Person A would state, "No way, he's a wreck," and "stuff like that." Respondent also "heard through other people" rumors "that he (Person A) was upset and he was talking to other people about me that were not part of OCCB, that weren't undercover or investigators." When Respondent was asked, "What did you choose to do upon hearing" these rumors? He answered, that he called up IAB and falsely alleged that a civilian had told him that Person A had shown photos of two undercover officers to a civilian and had made disparaging remarks about the undercover officers whose photos he had displayed. When Respondent was then asked, "Now, what made you call IAB? What made you handle it in that specific manner?" He answered, "There was posters that are put up around the precinct" that stated that "you can make an anonymous complaint."

Respondent testified that he was surprised when he received the call on September 19, 2014, from the IAB investigator because, based on what he had read on an IAB poster [Respondent's Exhibit A], it was his understanding that the anonymous phone call he had made to IAB two days earlier was completely confidential. Respondent implied that when he received this call he felt as if he had been doubled-crossed by IAB because he had read on IAB's

“Corruption Tears Us All Apart” poster that the identity of a caller would “remain totally anonymous” and that there would be “no recording” and “no caller ID” identified on calls made to the phone numbers listed on the poster [Resp. Ex. A]. Respondent testified that he believed “that protected you if there was any validity to it.”

On cross-examination, Respondent confirmed that after he heard rumors that Person A was making negative comments about him to others, he did not attempt to speak to Person A or to any other supervisor at his command about this. Respondent also confirmed that he never sought any type of assistance from any member of the Department or anyone outside the Department, other than a private physician who prescribed him sleep medication. When Respondent was asked what he thought he would gain by calling IAB to make a false complaint against his supervisor, he answered, “Maybe that I just wanted him to back off a little bit...at the time that's what I thought, maybe he just would back off, it would kind of stop.”

Evidence Presented at Trial Regarding Case No. 2015-13559

It is not disputed that Respondent was assigned to the Organized Crime Control Bureau (OCCB) between January 23, 2014 and October 2, 2014, performing undercover duties which consisted of entering suspected prostitution locations posing as a potential customer who was offering to pay for sex acts. It is further undisputed that each time Respondent performed his undercover role, he was supported by an OCCB back-up team and that each time Respondent performed his undercover role he wore a kel audio transmitter which was monitored by his supervisor Lieutenant Agresta.

It is also uncontested that Abigail Swenstein is an attorney with the Legal Aid Society who is frequently assigned to defend women who have been arrested for prostitution and that she

contacted IAB after some of the defendants she had been assigned to represent made allegations to her regarding the actions of the undercover officer who had posed as a potential customer. Swenstein arranged for five of her clients to have recorded interviews by Sergeant Fred Sawyer of IAB at Swenstein's office. These women were Person B, Person C, Person D, Person E, and Person F. [Dept. Ex. 1-5]. She also arranged for another client, Person G, to be interviewed by an Assistant District Attorney and a DA Investigator. [Dept. Ex. 6]. Swenstein was present during all of these interviews.

Sergeant Luke Gasquez, who, at the point in time relevant to these charges, was assigned to IAB Group 54, testified that he became involved in the investigation into Respondent's alleged misconduct after his group took over the investigation from Group 41. After Swenstein contacted IAB, the investigation was assigned to Sergeant Fred Sawyer of Group 41. Sawyer ascertained that between January and October of 2014, 29 women were arrested for prostitution as the result of vice operations where Respondent had performed as the undercover. Sawyer attempted to contact all of these women. Gasquez did not know how many women Sawyer actually spoke to, but he was aware that some of the women told Sawyer that Respondent had not engaged in any misconduct. Gasquez confirmed that four of the women who were interviewed by Sawyer at the Legal Aid Society in the presence of Swenstein did so with the assistance of interpreters provided by the Legal Aid Society. Gasquez confirmed that he listened to the audio recordings of those interviews and he recognized Sawyer's voice. Gasquez conceded that he did not know what, if any, advice these women might have received from Swenstein prior to their interviews. Another complainant, Person G, who was arrested on May 29, 2014, made an allegation against Respondent during an interview with the New York County District Attorney's Office on July 10, 2014. Assistant District Attorney Julio Cuevas

provided IAB with a written summary report of that interview. [Dept. Ex. 6].

Gasquez testified that the Vice Enforcement Division guidelines for undercover officers, contained in Procedure No. [REDACTED]

[REDACTED] Any sexual

conduct is prohibited. Based on his review of the complainants' recorded accounts, Gasquez believed that Respondent violated these guidelines.

On cross-examination, Gasquez agreed that it was the Vice supervisor's job to monitor the [REDACTED] and that Respondent's direct supervisor was Lieutenant Agresta. An official Department interview of Agresta was conducted and he was asked whether anyone on the field team or any of the arrestees had made allegations to him regarding Respondent's conduct. Agresta stated that no allegations were made to him by anyone at any point. Agresta asserted that he was "overwhelmed" with work and had "a lack of supervisors" on his vice enforcement teams. Gasquez confirmed Agresta was the only team member interviewed by IAB. Gasquez agreed that Respondent had made 150 prostitution "buys" during his career as an undercover and that the case file documented occasions when Respondent had not been able to make a "buy," including times where the operation had failed because Respondent had refused to take off his clothing.

Hearsay Statements of the Six Women

Person B recounted to Sergeant Sawyer at a recorded interview [Dept. Ex. 1] that she was arrested for prostitution on January 23, 2014 inside a room at a [REDACTED] hotel. She stated that prior to the arrest, Respondent had called her on cell phone three or four times. However, she did not learn until after her arrest that this male caller was a police officer. She

agreed to meet him outside [REDACTED], which he said would be "more private." They then proceeded to a guest room on the third floor. Respondent put on music and they began dancing. He "treated" her to a beer from the refrigerator and drank one himself. She recounted that Respondent then "held my hands so I would touch him and I wouldn't touch him." She continued, "We were touching each other. He touched me in my private parts and I would touch him as well and then he told me that he was giving me a tip to help." She explained that this was a verbal tip, not a monetary one. Respondent then removed his clothes, leaving on only his T-shirt and boxers. He then let her lower his pants and she saw his penis. Person B further detailed that he told her to take her clothes off "like in a club," which she did. She specified that he touched "my breast, my tits, my pubis" and put his finger inside "my pussy." She denied that they engaged in oral, anal or vaginal sex. After about fifteen minutes inside the room, she heard people opening the door with a key card, but did not initially realize they were police. Five or six men surrounded her and she was placed under arrest. At the precinct, she inquired about her male "friend," who had also been handcuffed, and was told that he was a police officer.

Person C stated to Sergeant Sawyer at a recorded interview [Dept. Ex. 2] that she was arrested and charged with prostitution on May 21, 2014 [REDACTED] in Manhattan. On that day, a male customer, the Respondent, came into the spa asking for a 30-minute massage. She agreed to do the massage and he paid her \$40. When she asked him to lie down on the massage table, he removed all his clothes. She massaged him for about 25 minutes, placing a towel on his leg while she worked on his back. She stepped away for a moment to get another towel to wipe massage oil and when she returned, Respondent had turned over and removed the towel. She asked if he wanted her to massage his head or feet and he declined. He then grabbed his "already enlarged" penis with his hand and began "shaking" it. She recalled

feeling "awkward" and not knowing what to do. She told a Department investigator, "Then...he asked me to hold his balls." Person C confirmed that she touched "his ball" with her left hand and he ejaculated after about a minute. She went to get a towel for him and he "ran" into the bathroom. She stated that he did not touch her and they did not engage in anal, vaginal or oral sex. While he was in the bathroom, four or five male officers arrived. She opened the door and they proceeded into the bathroom where they remained for several minutes. Eventually, the officers asked her to go with them and she said that she did so "first because of the language and second, I did touch . . . his ball." She did not learn that the customer was an undercover police officer until she spoke with her attorney.

Person D stated to Sergeant Sawyer at a recorded interview [Dept. Ex. 3] that she was arrested at a spa/massage parlor, [REDACTED] in Manhattan where she was working on June 13, 2014. On that day, she answered the phone and a male caller inquired about exactly where the spa were located. She let him know and shortly after, a "nice, white guy" came inside. She asked if he wanted a massage, and he indicated that he did and that he would stay for thirty minutes. They moved into another room and he removed all his clothes. She remembered being surprised that he was fully naked. There was a towel next to him, but he did not cover himself. She massaged his back and leg for ten minutes, during which "everything was fine." Person D stated that as she massaged his leg, "he lift his ass." The man then turned over, fully exposed, and "when I did the massage, he grabbed my titty" with his right hand. She rubbed his hand and, pulling back, told him that he could not touch her. She started to resume the massage but "he touch me again, in my ass, my everything and I pull back his hand again...and he couldn't stop. So I left him and went back to his leg . . . so he couldn't touch me." The man then offered her two hundred dollars "for fuck" and she told him, "I am sorry, is not that place." At that point,

the 30 minutes had elapsed and the man got up and went to the restroom. She saw some twenty dollar bills on a shirt but did not take or touch them because "I scared when I seen the money... I was thinking he want . . . trouble. . . It's not mine . . . I didn't ask money. . . ." While he was in the restroom, police officers knocked on the door and, after she opened it, asked to see her license. She was arrested after being unable to produce a license. As to the criminal charge against her that had been Adjourned in Contemplation of Dismissal (ACD), Person D told Sawyer that "because it's open case six months," that "I want this case to be cancelled."

Person E stated to Sergeant Sawyer at a recorded interview [Dept. Ex. 4] that she was arrested on September 13, 2014 at the [REDACTED] Hotel in Manhattan. She has posted an ad on "Backpage" and Respondent had called and asked her to meet him at a specific room in the hotel. As she stood outside the room, she asked him to take off his clothes. After Respondent, standing in the doorway, removed all his clothes, she proceeded inside and he gave her \$300 in cash. She detailed that he was "running around" the room and eventually laid down on the bed. Person E began to massage his thighs and he said, "No. I don't need that. I feel bad. You can just take the money and then leave." Respondent stood up and she massaged his penis, which she described as "soft." She explained that she had noticed a "drug smell" in the room and asked Respondent if he had taken drugs. According to Person E, he answered affirmatively. She noted, though, that she did not observe him use drugs nor did she see any drugs fall out of his pockets. As she continued massaging his penis, Respondent said "Oh, I don't want it," and Person E went into the bathroom. While she was in the bathroom, he opened the hotel room door and four or five police officers entered. She observed Respondent kneeling on the floor as she was handcuffed and taken to the room next door.

Person F stated to Sergeant Sawyer at a recorded interview [Dept. Ex. 5] that she

was arrested at [REDACTED] a residential location in Manhattan on October 2, 2014. She explained customers could buy “service” at the location and that “someone” would call and alert her that a customer was coming. On that day, she received a call telling her a customer was on his way and that she should charge him \$140. The customer, Respondent, entered the residence and asked if she spoke English. She said no and he handed her \$140 in cash and proceeded to take off all his clothes. She recalled that he was impatient and began pointing to her mouth, a gesture that she understood to mean he wanted oral sex. Respondent sat on the bed and, “He put his penis into my mouth and he asked to go deeper and deeper, but I feel very uncomfortable. Then I stopped doing that for him . . . He just pushed my head, kept getting closer to him.” According to Person F, “After the oral sex . . . we had the real sex, intercourse.” Respondent wore a condom and ejaculated. She then disposed of the condom while he used the bathroom. A few seconds after he emerged from the bathroom, police officers began knocking on the door. When she did not let them in, they broke down the door. She attempted to cover up with Respondent’s shirt but Respondent took it from her. She was ultimately placed under arrest and taken to a police car for transport to the stationhouse.

Person G, at an interview conducted on July 10, 2014 by Assistant District Attorney Julio Cuevas that was memorialized in a report prepared by DA Investigator Edward Johnson [Dept. Ex. 6], stated that on May 30, 2014, she and Person H were employed at a massage parlor. Person G stated that a man entered the massage parlor and paid the receptionist \$100.00. He requested a “four hand,” meaning “two girls,” massage. Person G and Person H agreed to perform a 30 minute massage for \$80.00 each. When Person G entered the massage room, the man was already completely naked facing her. Person G told the man to lie face down on the massage table and covered him with a towel. After Person G and Person H had performed a 30

minute massage, the man turned over on the table exposing his penis. He asked if they "do this," as he simulated a "hand job." Person G asked him if he was a police officer and he answered "no." Valdes then began to give the man "a hand job." The man asked them to take off their tops to expose their breasts and they both did so. The man touched Person H's breasts and buttocks and then ejaculated. The man then entered the bathroom. Soon, police officers entered and arrested Person G and Person H for prostitution.

Respondent's Testimony Regarding Case No. 2015-13559

Respondent testified that before he entered any massage parlor that was a suspected prostitution location, he would test his kel to make sure he could communicate with the field team in case his personal safety was endangered. His kel was on his person every time he served as an undercover. Respondent explained that once he was inside a location, he would ask for a massage, obtain a price and "take off everything but [his] underwear" before lying down on the massage table. When he was asked about noticeable markings on his body that would be visible to the masseuse, he acknowledged having a tattoo on his right shoulder of a medallion with writing underneath and another of a dragon on his upper right back. During the massage, he would engage the masseuse in a "sexually related conversation for prostitution," such as asking for a "happy ending" or "simulate for like a hand job." If the woman agreed, he would ask for a price because "it's not good until you get a dollar amount . . ." He considered the "buy" "completed" once there was an agreement as to an amount of money and he would usually hand the prostitute cash. Respondent would then notify the field team, via his kel, to move in by using the code word [REDACTED]. When the team moved in, Respondent would try to be in the bathroom, explaining that he "learned early in my career it's good to be in one safe spot just in case things go wrong inside the location." After a buy, Respondent would start completing his

buy report immediately. He estimated he had been involved in "over a thousand" prostitution operations.

Respondent testified that his understanding of the rules an undercover must follow in a prostitution operation are that undercovers could not take off their boxer shorts and were not allowed to "grope, fondle, touch their breasts, genitalia or anything like that." Although he believed that undercovers were allowed to touch the women's shoulders and hold their hands or arms, he was certain that undercovers "are not allowed to touch anything private on them," even over their clothes. He asserted that prostitutes who had previously been arrested and were aware of the rules that undercovers were required to adhere to would sometimes "test" undercovers by demanding that they remove all of their clothing. If this happened, Respondent stated he would simply leave.

Respondent provided an account of each of the encounters at issue at this trial by using the "Buy Reports" he prepared [Resp. Ex. B-G] to refresh his recollection. As to Person B [Resp. Ex. B], Respondent recounted that they met at a hotel after he responded to her ad on "Back Page." Respondent met her outside and they went up to the room where she agreed to "intercourse and oral and a shower" for \$280. They communicated in English. He denied getting fully naked but he agreed that he took his shirt off. He denied that he had engaged in intercourse with her. He acknowledged that he shook her hand and hugged her, acts which he believed were permissible. He denied touching her breasts, attempting to rub her vagina over her clothes or touching her buttocks during the hug. He alerted the field team, who were inside the adjoining room, over the kel with his code word. He was wearing boxers and pants when the field team entered the room.

Respondent testified that his encounter with Person C [Resp. Ex. C] took place at a

massage parlor. He entered and asked for a thirty minute massage. At some point during the massage, Respondent asked for a "hand job" and Person C agreed for \$20. Respondent then notified the field team to move in via his kel. He denied engaging in sex, receiving a hand job or ejaculating at any point, and he denied Person C's allegations that he asked her to touch his testicle as he stimulated himself or that that he had fully disrobed in Person C's presence.

The encounter with Person D [Resp. Ex. D] also took place at a massage parlor. Respondent testified that at some point during the massage, he offered her \$60 for a hand job, "chew[ing] her down from \$100," and she agreed. He denied removing his boxers, putting his hand "anywhere inappropriate," and/or engaging in sexual activity. On cross-examination, he denied giving Person D more money to remove her top and further denied touching her "at all," stating that he did not hug her or shake her hand. He acknowledged that she touched his buttocks during the massage, even though he had not requested that she do so. He noted this "inappropriate" occurrence in his buy report.

The operation involving Person E [Resp. Ex. E] took place in a hotel room after he placed a phone call in response to an ad on Back Page. He spoke on the phone with a man and they agreed on a price for a woman to come the hotel room. Person E arrived at the room and agreed to have sex with him in exchange for money. The field team heard the agreement over the kel, which was in a nightstand drawer, and moved in and arrested her. He denied that he was naked when the team came into the room and he denied using drugs or acting like he was on drugs. He denied having any physical contact with Person E whatsoever. He could not recall whether he had disrobed but acknowledged that she began to remove her clothes by taking off a jacket. He also recalled that when she arrived, Person E began moving looking behind curtains and "other things," and when he asked her what she was looking for, she responded, "The police."

The encounter with Person F [Resp. Ex. F] took place at a building in Manhattan after Respondent spoke on the phone to a woman and they agreed on a price. When he arrived, a male let him into the vestibule and told him to go to an apartment. An Asian female opened the apartment door and they negotiated a \$220 price for "sex and oral." Respondent handed the cash to Person F and the field team moved in. He denied engaging in any sex acts or ejaculating into a condom. He testified that she removed all of her clothes and that she was holding his jacket when the field team moved in, but he had not removed any of his other clothing. He denied having any physical contact with Person F while she was nude, or shaking her hand, hugging her, touching her breasts or buttocks or removing his penis from his pants.

Respondent's interaction with Person G [Resp. Ex. G] took place at a massage parlor [REDACTED], which Respondent noted was a well-known prostitution location where several Vice operations had previously been conducted. When he went inside, he was offered a "four hand massage," which he explained means "two girls." He identified the other woman involved as Person H. He agreed to the massage for \$100 and disrobed to just his boxers. As the thirty minute massage was nearing its end, Respondent asked if the massage price "included a four-hand hand job" and the women agreed to do this for an additional \$80 each. He then got up, gave them the money and notified the field team to come in. Respondent denied that he was ever completely naked; or that he had touched the breasts or buttocks of either woman; or that his penis was ever exposed; or that he actually received a "hand job;" or that he had ejaculated; or that he had a condom on his person on this occasion or during any other operation.

Analysis Regarding Case No. 2015-13559

Respondent's claim that he was denied due process because the charges provide inadequate notice of the misconduct he is alleged to have committed

The charges allege that during the eight month period between January 23, 2014 and October 2, 2014, Respondent "engaged in conduct prejudicial to the good order and efficiency of the Department," in that he offered six women money "in exchange for sexual acts" on six occasions while on duty; and that he "solicited" these six women "to engage in conduct he knew to constitute a crime." Respondent's attorney argued that these charges should be dismissed because they provided inadequate notice to Respondent of the specific misconduct he had allegedly engaged in. Respondent's attorney's argument that the wording of the charges merely recites the duties of a vice undercover officer, is supported by the OCCB Manual's Procedure [REDACTED] which states that an undercover officer who is assigned to enter a suspected prostitution location posing as a potential customer is required to "engage subject in conversation in which he/she agrees to perform a sexual act in return for a fee."

The Advocate argued that the assertion in each charge that Respondent had engaged in conduct prejudicial to the good order and efficiency of the Department placed Respondent on notice that he had committed misconduct when he offered these women money in exchange for sexual acts and when he solicited the women to engage in conduct he knew constituted the crime of prostitution. Less convincingly, the Advocate also argued that these charges implicitly placed Respondent on notice that he had acted with the intent that the women would actually engage in sex acts with him; that they did engage in sex acts with him; and that he had engaged in these sex acts solely for his own "personal gratification."

The New York Court of Appeals has held that in the context of an administrative

disciplinary hearing, the charges that are served on a Respondent must be reasonably specific, in light of all the relevant circumstances, to give actual notice to the Respondent of the specific misconduct he is alleged to have committed sufficient to allow for the preparation of an adequate defense.² In *Wolfe v. Kelly*,³ an appeal of a guilty finding at an NYPD disciplinary trial, the Appellate Division First Department dismissed two specifications brought against a detective who had been serving in an undercover capacity in a narcotics unit conducting “buy and bust” operations. The court held that because the charges (which the detective was found guilty of) covered a two-year period and did not cite any specific dates or locations, the charges had denied the detective due process of law by failing to provide sufficient notice of the specific dates and locations where he was alleged to have committed misconduct.

However, in that case, the court stressed that the Department Advocate had failed, during discovery, to turn over to the detective’s attorney information which would have amplified the charges by providing the specific dates and locations where it was asserted he had engaged in misconduct. Here, Respondent’s attorney acknowledged that during discovery he had received “buy reports” which cite specific dates and locations and which, Respondent’s attorney conceded, establish that Respondent was the undercover officer on all six of the charged occasions. (Tr. p. 258) Respondent’s attorney also received the recorded statements of each of the six women in which they each described Respondent’s actions.

Based on the decision in *Wolfe*, the charges here, on their face, provided inadequate notice to Respondent of the specific misconduct he is alleged to have committed, and where and when he was alleged to have committed the misconduct. However, there is no need to determine Respondent’s claim that this lack of notice denied him due process, and there is no need to

² Matter of Block v. Ambach, 73 NY2d 323, 333 (1989).

³ 79 AD3d 406 (1st Dept. 2010); appeal dismissed, 17 NY3d 844 (2011).

determine whether the discovery provided to Respondent ameliorated the lack of actual notice in the charges, because I find that the Advocate did not present evidence which sufficiently proves these charges by a preponderance of the credible evidence.

Analysis of the Department's Evidence

The only evidence offered by the Advocate to prove these charges consisted of the transcripts of the statements five of the women made to Sergeant Sawyer at their recorded interviews, and the DA investigator's report regarding the interview of Person G conducted by Assistant District Attorney Cuevas; all of which the Advocate offered as hearsay evidence at this trial. Although hearsay is admissible at Department disciplinary trials and may form the sole basis for making findings of fact,⁴ even where hearsay testimony is supported by circumstantial evidence it may be insufficient to support a finding of guilt in a disciplinary trial that involves close questions of credibility.⁵ The determination of the instant charges involves close questions of credibility. Since Respondent denied under oath at this trial that he had engaged in the conduct that the women alleged he engaged in, a determination must be made as to whether any of the women's statements are more credible than the trial testimony offered by Respondent.

Since none of these women testified at this trial, Respondent's attorney did not have the chance to cross-examine any of them. That Respondent's attorney was denied this opportunity is not insignificant because the United States Supreme Court has noted that, "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."⁶ Here, Respondent's attorney did not have the opportunity to attempt to impeach the women and thereby establish that their accusations

⁴ RCNY Title 38, 15-04(e)(1).

⁵ Eppler v. Van Alstyne, 93 AD2d 930 (3d Dep't 1983).

⁶ Goldberg v. Kelly, 397 US 254, 269 (1970).

against Respondent were not worthy of belief.

Each of these women had been arrested and charged with a crime based solely on Respondent's claim that they had agreed to perform a sex act for money. Thus, each of them had a motive to paint Respondent's own words and actions in the worst light possible and to tell their interviewer what they thought he wanted to hear, if they believed that doing this would help them regarding the prosecution of their own arrest charges. Person D was the only one of the women who, on the record, verbally demanded a *quid pro quo* (that her criminal case be not just ACD'd but dismissed outright) in exchange for assisting IAB's investigation of Respondent. However, it is likely that the others also at least hoped that their cooperation with IAB would result in a tangible reward. Thus, it is significant that Respondent's attorney did not have the opportunity to cross-examine each one of the women as to whether she had agreed to be interviewed because she was seeking a personal benefit, as to whether she had tailored her story to curry favor with IAB, and as to whether she harbored an anti-police bias.

Moreover, not only did none of the six women testify at this trial, the Advocate did not offer testimony from any person who was present at any of the six interviews; not IAB investigator Sawyer who interviewed five of these women; and not the Assistant District Attorney or the DA Investigator who interviewed Person G. Thus, the record is devoid of any description regarding the testimonial demeanor the women displayed at their interviews, including whether they looked to their attorney, Swenstein, for guidance in answering questions posed to them during their interviews.

The statements the five women made to Sergeant Sawyer and the DA investigator's report of Person G's interview were compared with each other to ascertain if each woman described an action by Respondent that showed a consistent pattern which would make their

statements mutually supportive. Although Person G, Person E, Person C, Person F and Person D all claimed that Respondent took off all of his clothes and was naked, Person B stated that when she pulled down his undershorts, he pulled them up again. As to the sex acts that the women stated Respondent asked for and/or received, there is little consistency. Person C stated that Respondent asked her to touch his "balls" and that he then masturbated himself. Person B stated that he touched her buttocks and breasts and placed his finger in her vagina but that he did not ask for oral or vaginal sex. Person G stated that Respondent touched Person H's buttocks and breast, asked for a "handjob," and that Person H complied with his request. Person D stated that Respondent touched her buttock and one breast and offered her "\$200.00" for "fuck" but she told him no. Person F stated that she had oral and vaginal intercourse with Respondent. Person E stated that after she massaged Respondent's thighs, he told her that he did not need that and that she could take the money and leave, but because she felt bad, "she initiated a massage of his soft penis, although he told her he could not get an erection because he had consumed drugs.

The Advocate offered no independent testimony that corroborates any of the women's claims. For example, the record is devoid of testimony from Agresta, who was Respondent's supervisor and who monitored the keg Respondent carried with him during these operations and heard his conversations with the women; and devoid of testimony from many other members of the Vice teams who, after receiving a signal from Respondent, burst in to make the arrest. These members of the service likely were in a position to testify with respect to any irregularities, particularly the supervisor whose job it was to monitor the keg's transmissions. For example, the Advocate's failure to call any of the officers who were involved in the arrest of Person E is significant since Person E stated that when the officers burst into the room and handcuffed her, Respondent was kneeling on the floor naked.

Finally, the accuracy of four of the transcripts of the interviews conducted by Sergeant Sawyer is open to question because the statements four of the women made were translated into English by non-Court certified translators. Person B's interview was conducted in Spanish and translated into English by Legal Aid Society employee Randall Schaefer, and the interviews of Person C, Person F and Person E were conducted in Mandarin and translated into English by Legal Aid Society employee Zimei Weng. Although the resumes of Schaefer and Weng (which were submitted by the Advocate) cite their qualifications and experience, their resumes do not show that they are Court-certified translators.

Based on the above analysis, I find that the Advocate did not meet his burden of proof. The record does not contain evidence which sufficiently proves the charges in Case No. 2015-13559 by a preponderance of the credible evidence. Therefore, Respondent is found Not Guilty of the subject charges.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 17, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached Confidential Memorandum.

Under Case No. 2015-13352, Respondent has admitted that he phoned the IAB Command Center and made a false allegation of misconduct against his supervisor, Person A, and that when an IAB investigator called him two days later he repeated these false allegations. Respondent's action of lodging a false complaint against his supervisor constitutes extremely serious misconduct. The gravity of Respondent's misconduct here is increased by Respondent's testimony that he lacked a credible factual basis for making this false complaint and also by the subject matter of his false complaint. Respondent testified that his sole basis for

making this false complaint was that he had heard "rumors" that Person A "was talking to other people about me that were not part of OCCB, that weren't undercover or investigators." As to the subject matter of Respondent's false complaint, as an officer who had been serving in an undercover capacity, Respondent knew, or should have known, that his assertion that Person A had violated OCCB confidentiality procedures by disclosing the identity of undercover officers to non-OCCB personnel, including a civilian, constituted an allegation that his supervisor had engaged in extremely serious misconduct.

When an IAB investigator called him two days later, Respondent was presented with the opportunity to withdraw his false complaint. However, rather than repairing the initial wrong he had done to Person A, he instead compounded his initial misconduct by repeating his false allegations. Respondent implied that when he received this call he felt as if he had been doubled-crossed by IAB because he had read on IAB's "Corruption Tears Us All Apart" poster that the identity of a caller would "remain totally anonymous" and that there would be "no recording" and "no caller ID" applied to calls (RX A). However, since in this case Respondent was making false anonymous allegations, it is clear that he was relying on the poster's assurances of confidentiality not for any legitimate reason, but rather because he did not want his false allegations traced back to him.

Finally, in determining an appropriate penalty recommendation, the impact of Respondent's misconduct on the Department and on his victim must be considered. Respondent knew full well at time he made and then repeated his false allegation that his complaint would result in IAB investigators wasting their valuable time investigating his bogus claim and that their investigation would likely include, as a matter of course, a formal interview of his victim, Person A, who would be placed in the position of having to defend himself against a

charge he was innocent of. Although Respondent testified extensively about his own stress, his actions of making and then repeating his false allegation demonstrated a complete lack of empathy or concern for the stress that he knew he would be causing Person A.

In Case No. 2007-83230 (signed Sept. 9, 2010), a six-year police officer who had no prior disciplinary record was required by the Police Commissioner to immediately forfeit his position as a member of the service⁷ because he engaged in the same misconduct that Respondent has admitted to committing here. In that case, a police officer falsely reported to IAB that a fellow officer, who had formerly been his girlfriend but had broken up with him, was involved in the sale of illegal drugs. When he was subjected to an official Department interview, he repeated this lie.

The Trial Commissioner in that case could just as well have been speaking of Respondent here when he wrote that the officer in that case had “manipulated the Department’s internal investigative function and perverted it into a weapon he used against another officer” merely because he harbored a personal grievance against her. In that case, as here, the officer lied more than once⁸ and his lies had an adverse impact not only on his victim, who had to defend herself against his false claim, but also on the Department in that because the officer stuck to his false allegation, IAB investigators were required to spend valuable time and resources investigating a bogus complaint.

Respondent’s testimony that at the time he made his false allegations against his supervisor he was depressed over the death of his best friend and “very tired” and “stressed out,”

⁷ By insisting that the officer forfeit all his leave balances and immediately file for vested interest retirement.

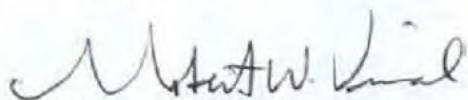
⁸ See also Case Nos. 2010-0298 & 2011-5529 (Feb. 4, 2013), where the Police Commissioner dismissed a police officer who lied to federal agents at her first interview and then lied again at a second interview.

does not serve to excuse, justify or even mitigate his misconduct. Moreover, the specific, detailed, allegations that Respondent made about Person A indicate that his call to IAB was a premeditated, not a spontaneous, action.

Respondent testified that his motive for calling IAB to make a false complaint against his supervisor was that he "wanted him (Person A) to back off a little bit . . . maybe he just would back off, it would kind of stop." Thus, Respondent admitted that he engaged in this serious misconduct because he hoped that by inventing trouble for his supervisor he might not hear any more rumors that his supervisor was complaining about him. Respondent betrayed that he had another selfish motive to create trouble for his supervisor. Respondent testified that he had heard rumors that the reason that he was not being assigned to perform any details was because whenever he was mentioned for a detail, Person A would state, "No way, he's a wreck," and "stuff like that." This testimony leads to the conclusion that Respondent had specifically alleged that Person A had violated OCCB confidentiality procedures because he wanted his complaint to result in Person A being replaced by a supervisor who would be more amenable to Respondent.

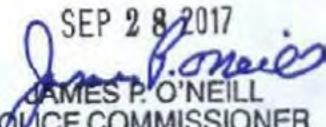
Since Respondent's misconduct here raises serious questions regarding his personal and professional integrity, his trustworthiness, and his judgment, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

SEP 28 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL GOLDEN
TAX REGISTRY NO. 946484
DISCIPLINARY CASE NOS. 2015-13352 & 2015-13559

Respondent was appointed to the Department on January 17, 2008. Respondent received an overall rating of 4.0 on his 2010 annual performance evaluation, an overall rating of 3.5 on his 22-month probationary evaluation, and an overall rating of 3.5 on his 16-month probationary evaluation. He has been awarded two Excellent Police Duty medals.

[REDACTED]

[REDACTED]

He has a prior disciplinary record. In 2012, he forfeited five vacation days as a penalty after he was found guilty at trial of having failed to properly secure the handcuffs on an arrestee which resulted in the escape of the arrestee. On January 30, 2017, he was placed on Level 2 Disciplinary Monitoring which is continuing.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials